



DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2020-0157]

Hours of Service of Drivers: Pipe Line Contractors Association; Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; denial of application for exemption.

SUMMARY: FMCSA announces its decision to deny the exemption request from the Pipe Line Contractors Association (PLCA). The PLCA sought an exemption from certain hours-of-service (HOS) regulations for drivers of a variety of commercial motor vehicles (CMVs) employed by its member companies. The PLCA specifically sought an exemption from (1) the requirement of the short-haul exception that drivers return to the work reporting location from which they started the day; (2) the requirement that drivers use electronic logging devices (ELDs) if they must complete a record of duty status (RODS) on more than 8 days in any 30-day period; and (3) the prohibition on driving after having been on duty for 70 hours in 8 consecutive days. The PLCA also requested that CMV drivers used exclusively in the construction and servicing of pipelines be allowed the same HOS exceptions currently available for oilfield operations. FMCSA analyzed the exemption application and public comments, and determined that the application lacked evidence that would ensure a level of safety equivalent to, or greater than, the level that would be achieved absent such exemption.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; (202) 366-2722; MCPSD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Operations, (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to www.regulations.gov and insert the docket number, FMCSA-2020-0157 in the “Keyword” box and click “Search.” Next, click the “Open Docket Folder” button and choose the document to review. If you do not have access to the internet, you may view the docket by visiting the Dockets Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE, Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the *Federal Register* (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the *Federal Register* (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify

the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

The PLCA is a trade association of unionized pipeline contractors specializing in the construction and maintenance of oil and gas transmission pipelines. According to the PLCA, its members are committed to completing every job with the highest level of attention to safety, quality, and environmental compliance. Pipeline jobs range from construction of major interstate and intrastate pipelines to maintenance and repair work for utilities. These projects vary in duration, from a few weeks to six months or more on a major construction project. PLCA's members typically hire workers on a project-by-project basis who will work on multiple jobs each year, typically traveling all over the United States to do so. Pipeline construction companies operate fleets of CMVs, most of which are operated by holders of commercial driver's licenses (CDLs). PLCA believes that the current HOS regulations are ill-suited to address the needs and safety concerns of pipeline industry drivers. Pipeline contractors are skilled tradesman and driving is ancillary to their primary role as construction workers, as they typically spend only a few hours a day operating CMVs on public roads.

PLCA requested exemption from the following HOS provisions:

(1) The short-haul exception (49 CFR 395.1(e)(1)) was recently amended by the final rule adopted on June 1, 2020, with an effective date of September 29, 2020 (85 FR 33396). It retains the requirement that drivers return to the work reporting location from which they were dispatched in the morning. PLCA requested that drivers for its member companies who otherwise meet the requirements of the short-haul exception be allowed to return to a different location than the one where they started their workday.

(2) Drivers subject to the Agency's HOS regulations are required to use ELDs if they must complete RODS on more than 8 days in any 30-day period (49 CFR

395.8(a)(1)(iii)(A)(1)). PLCA requested that drivers for its member companies be allowed to use paper RODS unless RODS are required on more than 16 days in any 30-day period.

(3) Drivers are prohibited from driving CMVs after having been on duty for 70 hours in a period of 8 consecutive days (49 CFR 395.3(b)(2)). PLCA requested that drivers for its member companies be prohibited from driving only after having been on duty for 80 hours in 8 days. PLCA also requested that drivers of CMVs used exclusively in the construction and servicing of pipelines be allowed the same HOS exceptions currently available for oilfield operations (49 CFR 395.1(d)).

IV. Method to Ensure an Equivalent or Greater Level of Safety

PLCA asserted that granting the exemptions sought would not negatively impact safety. According to PLCA, drivers working for its member companies are not engaged in continuous driving; they work on the pipeline right-of-way, often operating different construction vehicles. Because of the different jobs they normally perform and the minimal driving they do, they are less susceptible to fatigue. The applicant added that as its members' employees spend most their day on the pipeline right-of-way and typically drive only at the start and end of the workday, their total driving time would not be extended. Pipeline drivers very rarely, if ever, utilize their entire 11 hours of allowable daily driving time. PLCA develops and administers, in conjunction with the industry's labor unions, robust training programs for union employees, including CMV drivers, focused on safe operations. PLCA member companies and their drivers have excellent safety records and the applicant did not anticipate any reduction in safety attributable to the granting of the exemptions sought. A copy of the exemption application is available for review in the docket for this notice.

V. Public Comments

On July 22, 2020, FMCSA requested public comments on PLCA's exemption application (85 FR 44356). The Agency received 25 comments. The Commercial Vehicle Safety Alliance (CVSA) and the American Academy of Sleep Medicine (AASM) opposed the application. CVSA commented that "regardless of the amount of time spent driving, extended periods of on-duty time would subject a driver to fatigue. This fatigue would be greatest at the end of the workday, when PLCA says these drivers are most likely to be operating the commercial motor vehicle." CVSA added that "the Federal Motor Carrier Safety Regulations are put into place to provide a framework of the minimum requirements to operate commercial motor vehicles safely. An exemption to those safety regulations should not be granted simply because it will increase productivity," The AASM also raised the issue of added driver fatigue in its comments.

There were 23 comments supporting PLCA's exemption request, 21 of which were identical form letters from its member companies. One individual also commented, and PLCA itself wrote: "Now more than ever, pipeline contractors require flexibility to complete work quickly and efficiently."

VI. FMCSA Safety Analysis and Decision

FMCSA has evaluated PLCA's application and the public comments and decided to deny the exemption. The HOS regulations limit when and how long an individual may drive, to ensure that drivers stay awake and alert while driving, and to help reduce the possibility of driver fatigue.

Recent amendments to the HOS rules which took effect September 29, 2020, increase the flexibility available to short-haul operations. However, the Agency did not amend the requirement that short-haul drivers return to the normal work reporting location, despite docket comments requesting such a change. PLCA did not provide enough data to demonstrate that the HOS changes it requested would achieve an

equivalent level of safety. PLCA has not submitted any new evidence or safety data to support exemptions from the current HOS provisions.

PLCA provided no analysis of the safety performance of drivers who would operate using paper records of duty status under the exemption, nor did it provide analysis of how the risk of fatigue and crashes when operating without an ELD would be equivalent to the risk posed with a device installed on the vehicle. The PLCA application did not consider practical alternatives or provide an analysis of the safety impacts the requested exemption may cause and failed to offer countermeasures to ensure that the exemptions would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation. The application is therefore denied.

Robin Hutcheson,
Deputy Administrator.

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